HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No. 20287 of 1998

Between:

A.V. Subba Reddy

… Petitioner

AND

The Director of Factories,
A.P., Hyderbad and two others.

… Respondents

: ORDER :

Counsel for the petitioner : Shri M.N. Narasimha Reddy

Counsel for respondent Nos. Government Pleader for

Dated: 03rd October, 2007

This petition filed under Article 226 of the Constitution of India for issue of a mandamus to the respondents to implement the directions contained in Memo No.D.Dis.B1/28329/97 dated 30.04.1998 issued by Sri K. G. Raju, the then Director of Factories, Andhra Pradesh, permitting the Inspector of Factories to withdraw S.T.C.Nos. 306 to 310 of 1993, which were pending before the Judicial Magistrate of First Class, Rajampet is representative of many cases in which interlocutory judicial intervention effectively frustrates the proceedings initiated by the competent authority for enforcing the statutes enacted by the Parliament for the benefit of the working class and ameliorating their conditions of service.

The petitioner is Managing Director of Tirven Steels (P) Limited, which is engaged in manufacturing of iron alloys ingots in its factory at Venkata Rajampet, Pullampet Mandal, Kadapa District. This process has been identified as one of the hazardous process listed in the first Schedule under Section 2 (cb) of the Factories Act, 1948 (for short, 'the Act'). A major accident took place in the factory on 16.07.1993 at 4.30 p.m., viz., while removing the solidified metal bridge block from the induction furnace with the help of EOT Crane, the entrapped gases under pressure along with the molten metal suddenly ejected from the furnace and molten metal fell on the workers, who were on the furnace platform, which resulted in the death of 14 workers. Deputy Chief Inspector of Factories, Kurnool, who inspected the accident found that the accident occurred due to violation of the provisions contained in Section 7A read with Section 14 of the Act and Rule 61-F (3) of the Factories Rules, 1950 (for short, 'the Rules), Section 7A(2)(a) read with Section 41 and Rules 61-F (3) etc., of the Rules. Thereupon, five

complaints were filed against the petitioner – occupier of the factory in the Court of Judicial Magistrate of First Class, Rajampet on the ground of violation of the above noted and other provisions of the Act and Rules. The same were registered as S.T.C. Nos.306 to 310 of 1993. For the next five years, no tangible proceedings appeared to have been taken by the officers of the department for prosecuting the petitioner and by taking advantage of this delay and the fact that Shri K.G.Raju, the then Director of Factories was to demit office on 30.4.1998, the petitioner made representations dated 14.11.1997 and 17.12.1997 for withdrawal of the prosecution. Shri K.G. Raju obliged the petitioner and passed order on the file for withdrawal of the cases pending against him. Consequently, Memo dated 30.4.1998 was issued to the Inspector of Factories, Cuddapah permitting him to withdraw the cases instituted against the petitioner.

It appears that the successor of Sri K.G. Raju felt shocked by the decision of his predecessor to withdraw the complaints after the same remain pending in the judicial fora for a period of almost five years. Therefore, he had instructed the officer concerned not to act upon the unwarranted action of Sri K.G. Raju. At that stage, the petitioner filed a writ petition under Article 226 of the Constitution and succeeded in persuading the learned Single Judge to pass interim order dated 22.07.1998 and thereby frustrated the proceedings pending in the Court of Judicial Magistrate First Class, Rajampet. As on today, fourteen years have passed from the institution of the complaints and no progress could be made because of the interim order passed by this Court.

Sri M.N. Narasimha Reddy, learned counsel for the petitioner submitted that the factory of his client has already been closed and, therefore, no useful purpose would be served by allowing the respondents to prosecute the petitioner moreso because compensation has already been paid to the dependants of the 14

deceased workers. He submitted that the successor in the office of the Director of Factories does not have the power, jurisdiction and authority to withdraw the sanction granted by his predecessor for withdrawal of the prosecution and, therefore, the Court may direct the respondents to take action in accordance with the decision contained in communication dated 30.04.1998. For the sake of reference, that communication is extracted below:

"OFFICE OF THE DIRECTOR OF FACTORIES:: A.P. :: HYDERABAD
Memo No.D.Dis.No.B **1/28329/98** Dated: **30-04-1998**

Sub: Factories Act, 1948 and Andhra Pradesh Factories Rules, 1950 – withdrawal of cases filed in STC No.306 to 310 against **Thriven Steel (P) Ltd., Rajampet, Cuddapah – Permitted.**

Ref: **Lr.No.Nil, dt.14-11-1997 of the management of the above factory received with Lr.No.B/1459/97, dt. 28-3-98 of the Dy.Chief Inspector of Factories, Cuddapah.**

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The Inspector of Factories, **Cuddapah** is informed that he is permitted to withdraw the cases filed in STC.No.**306 to 310** against the Management of the above factory from court.

Sd/- **K.G. Raju**
Director of Factories.

To
The Inspector of Factories, **Cuddapah.**
Copy to the Dy. Chief Inspector of Factories, **Cuddapah.**

///f.b.o.///

Sd/-30/4/98
SUPERINTENDENT

P/**304."**

In the counter filed by the respondents, it has been emphasized that 14 workers were killed due to the negligence of the occupier of the factory i.e., the petitioner and, therefore, there was no justification for the then Director of Factories to order withdrawal of the prosecution on the date of his retirement from service.

Although in the counter filed on behalf of the respondents, it has been averred that the full compensation ranging from Rs. 86,764/- to 89,192/- were not paid to the workers, learned counsel for the petitioner says that the entire amount has been paid to the dependants of the workers.

De hors the above controversy, I am convinced that there is no warrant whatsoever for exercise of jurisdiction of this Court under Article 226 of the Constitution of India for enforcing on administrative action of an outgoing Director of Factories, which per se indicates malafides of the officer, who directed his subordinate to withdraw the cases lodged almost five years ago. The petitioner has not disputed the fact that the then Director

Sri K.G. Raju passed order for withdraw of the complaints on the date he was demitting the office. Therefore, it is not too difficult to appreciate what must have persuaded him to direct a subordinate officer to withdraw the prosecution. One can read between the lines and draw an inference that the officer concerned acted with an ulterior motive and effectively frustrated the action initiated against the petitioner whose negligence resulted in loss of 14 lives of the workers and consequently rendered their families headless and breadless.

I am further of the view that once the Court had taken cognizance of the cases registered against the petitioner, there was no justification on the part of the then Director, Factories to order withdrawal of the cases and that too by sending a communication in the printed proforma by filling up the blanks like the name of the district in which the Inspector of Factories was posted and the case numbers.

For the reasons stated above, the writ petition is dismissed. The petitioner is saddled with costs of Rs.14,000/-. Rs.1000/- of this amount shall be paid to the families of each victim within a period of one month from the date of receipt of a copy of this order. The respondents are expected to ensure that the amount of cost is paid by

the petitioner to the families of the victims.

G.S. SINGHVI, CJ.

Date: 03.10.2007
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